IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

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THE HONOURABLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO.21782 OF 2003

Dated 25.1.2006

Between

Bondada Venkateswara Rao

.. Petitioner

AND

The Government of Andhra Pradesh rep by
Its Secretary, Department of Prohibition and
Excise, Secretariat, Hyderabad and 2 others.

.. Respondents

THE HONOURABLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO.21782 OF 2003

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ORDER:

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This writ petition is filed questioning the order of confiscation of the vehicle – Motor Car bearing No. AP 5X 123 as per the provisions of the A.P. Prohibition Act, 1995, ordered by the Deputy Commissioner of Prohibition and Excise, Kakinada Division, which was confirmed by the appellate authority - Commissioner of Prohibition and Excise, Andhra Pradesh vide orders dated 30.6.2003 .

The facts that lead to filing of this writ petition are that on 24.3.1999 at about 5.00 a.m. Prohibition & Excise Inspector, Enforcement, Kakinada while conducting the route watch, detected a case of transportation of 10 lts of ID arrack in the car

bearing No. AP 5 X 123 at Upumilli village. As the said transportation was in violation of the provisions of Sections 7 and 8 of the Prohibition Act, a case was registered in Cr.No.93/98-99 on the file of Station House Officer, Tallaveru. Consequent to such seizure and reporting of the matter, proceedings were initiated for confiscation under Section 13 of the A.P. Prohibition Act, 1995 (for short 'the Act') and on the ground that the petitioner did not respond to the show cause notice, the primary authority has passed orders dated 31.8.2001 confiscating the vehicle as also 10 lts of contraband liquor, seized from the vehicle. As against the said orders, the petitioner preferred an appeal to the Commissioner of Prohibition and Excise.

The main contention of the petitioner was that he was using the vehicle for hire purposes and at the time of the incident, the vehicle was in possession of the driver, who without his knowledge has undertaken the said transportation. As such, the vehicle is not liable for confiscation.

The appellate authority has rejected the appeal on the ground that the petitioner has not evidenced any interest to show that he has taken any legal action against the person who has misused the vehicle and in the absence of which the plea of the appellant cannot be believed that he had no knowledge about the transportation of the prohibited liquor in the vehicle.

Learned counsel for the petitioner submits that in the absence of any knowledge to the owner, the vehicle is not liable for confiscation. In support of his contention, reliance is placed on a judgment of the Division Bench of this Court in ***G. Nasar Reddy and another Vs. Commissioner of Prohibition and Excise*** . It is further submitted that the Government itself has framed rules for compounding the offences registered under the Act. But however, the said rules were not made applicable for the cases registered during the period from 16.1.1995 to 31.3.1997. As such, there was no opportunity for the petitioner to file an appropriate application before the competent authority seeking to compound the offence.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that against the judgment of this Court in ***Nasar Reddy's case*** (1 supra), the matter is carried to Supreme Court and the said

Judgment was suspended and the Special Leave Petitions are pending.

Therefore, whether knowledge of the owner is necessary or not for confiscating the vehicle is a matter pending adjudication before the Apex Court. However, so far as the judgment of the Division Bench of this Court is concerned, it was categorically held that in the absence of knowledge of the owner with regard to the transportation of contraband liquor undertaken by the driver, vehicle cannot be confiscated.

Be that as it may, it is to be seen that for the offences under Sections 7 and 8 of the Act, though initially Rules were framed in G.O.Ms.No.496 Revenue (Excise III) Dated 25.7.2000, they were made applicable only for the cases which were registered from 16.1.1995 to 31.3.1997 and subsequently amendments were made to the said Rules by G.O.Ms.No.1084 dated 21.12.2004. By virtue of the said amendments to Rule 2, the words “during the period from 16.1.1995 to 31.3.1997” were omitted. Further amendments were also made varying the quantities of various kinds of liquor for the purpose of compounding the offence. As the instant case was registered beyond 31.3.1997, there was no occasion for the petitioner for making an appropriate application for compounding the offence. The case of the petitioner came to be eligible only by virtue of the amendments made in the year 2004. Taking into account the quantity of liquor alleged to have been seized from the vehicle, in terms of the amended rules, the petitioner is eligible to seek for compounding the offence.

In that view of the matter, without deciding as to whether the petitioner had knowledge about the transportation being undertaken by the driver or not, I dispose of the writ petition setting aside the confiscation order dated 31.8.2001 passed by the Deputy Commissioner of Excise to the extent of confiscation of the vehicle only so also the order of the appellate authority dated 30.6.2003 and permit the petitioner to make an application to the appropriate authority/Deputy Commissioner of Prohibition and Excise, Kakinada Division, Kakinada to compound the offence by paying the requisite compounding fee, within a period of two months from the date of receipt of this order. On making such an application, the competent authority/Deputy

Commissioner of Prohibition and Excise shall pass appropriate orders in accordance with Andhra Pradesh Prohibition (Compounding of Offences) Rules 2000. The petitioner shall not transfer or alienate the vehicle till appropriate final orders are passed and communicated by the competent authority. It is also made clear that if no such application is moved within the period indicated above, the impugned order stands revived and it is open for the respondents to take steps according to law.

Subject to the above directions, the writ petition is disposed of. No order as to costs.

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R.SUBHASH REDDY,J

Dt.25.1.2006

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